

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RONALD WILSON,

NO. CIV. S-04-633 LKK/CMK

Plaintiff,

v.

O R D E R

PIER 1 IMPORTS (U.S.), INC.;
and MELLON/PIER 1 PROPERTIES
LIMITED PARTNERSHIP I,

Defendants.

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In March of 2004, plaintiff Ronald Wilson ("plaintiff")
filed suit against defendant Pier 1 Imports (U.S.), Inc., and
Mellon/Pier 1 Properties Limited Partnership I ("defendants").
Plaintiff asserts federal and state causes of action arising out
of allegedly inadequate accommodations provided for the physically
disabled in defendants' store ("the store"). Pending
before the court is plaintiff's motion to strike defendants' expert
disclosures.

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I.

BACKGROUND

This court's Status Order filed on June 2, 2004 stated that "all counsel are to designate in writing and file with the court and serve upon all other parties a final list of the names of all experts that they propose to tender at trial not later than sixty (60) days before the close of discovery herein established" (i.e., by May 2, 2005).

The court's order also stated:

An expert witness not appearing on said lists will not be permitted to testify unless the party offering the witness demonstrates: (a) that the necessity of the witness could not have been reasonably anticipated at the time the lists were exchanged; (b) the Court and opposing counsel were promptly notified upon discovery of the witness; and (c) that the witness was promptly proffered for deposition.

June 2, 2004 Order at 5.

On June 1, 2005, defendants served the disclosure of expert Kim Blackseth (30 days before the July 1 deadline) to rebut reports by plaintiff's experts who opined that the store's design was legally insufficient. Plaintiff moves this Court to preclude the testimony of Mr. Blackseth due to defendants' allegedly untimely designation of the witness. After this motion was filed, defendants offered to set a mutually agreeable date for the parties to depose this expert. Plaintiff rejected that offer.

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1 time the lists were exchanged. The proper course of action in this
2 case would have been for all parties to disclose their experts at
3 least 60 days before the close of discovery, as set forth in the
4 court's June 2, 2004 order.³

5 Plaintiff's motion to preclude the expert witness is GRANTED.

6 IT IS SO ORDERED.

7 DATED: July 25, 2005.

8 /s/Lawrence K. Karlton

LAWRENCE K. KARLTON

9 SENIOR JUDGE

10 UNITED STATES DISTRICT COURT

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26 ³ If defendants were truly in doubt, timely discovery would
have resolved the issue.